

**OPINION
50-193**

June 2, 1950 (OPINION)

TOWNSHIPS

RE: Levy

In your letter of May 29, 1950, you request the opinion of this office interpreting section 57-15191, 1949 Supplement.

You state that you would like to know what the eight mill levy provided for under the above section can be used for. Your specific questions being:

1. Can it be used for rebuilding an existing road?
2. Can it be transferred to the general fund by the voters in the township?
3. Is there a limit to the amount that can accumulate in this fund?"

Section 57-15191, 1949 Supplement, provides as follows:

TOWNSHIP LEVY FOR SURFACING HIGHWAYS; ELECTION. The electors of each organized township within this state may at their annual meeting by a majority vote authorize levy, not to exceed eight mills, upon the valuation of all taxable property within the township, the proceeds of which shall be used for the surfacing of highways within such townships.

Provided, however, that the county commissioners may authorize a levy not to exceed eight mills upon all taxable property within such unorganized townships, to be used for the surfacing of highways within said unorganized townships, as provided herein, under the direction of the county commissioners. The fund so raised by such levy in organized or unorganized townships shall constitute a revolving fund, to be used for the purposes as hereinbefore provided."

A reading of section 57-15191 makes it clear that the fund is to be expended only for the purpose of surfacing highways within the townships. In the ordinary case, this will mean spreading gravel upon a highway already constructed.

It is the opinion of this office, therefore, that the fund may not be used to rebuild an existing road, although, of course, it may be used to resurface an existing road.

Your second question is whether the voters of the township may transfer the fund provided for in section 57-15191, supra, to the general fund.

The statute provides that the fund "shall constitute a revolving fund." A revolving fund is one which continues indefinitely until

exhausted by expenditures from it for the purpose of which it was created or until otherwise disposed of by the authority creating it.

It is the opinion of this office that the fund in question may not be transferred to the general fund by the voters of the township, and that the fund must be preserved for the purpose for which it was created unless and until the legislature provides otherwise.

Your third question is whether there is a limit to the amount which may accumulate in this fund.

While ordinarily a revolving fund is thought of as being limited to a certain amount, the statute in this case provides that, upon the approval of the electors, an annual levy of eight mills may be made upon the valuation of all taxable property within the township. This levy is authorized irrespective of whether or not the proceeds of a prior levy have been spent.

It is, therefore, the opinion of this office that there is no limitation upon the amount which may accumulate in this fund as long as the electors continue authorizing the annual levy.

WALLACE E. WARNER

Attorney General